

CHAPTER 1

FEDERAL PROCUREMENT REQUIREMENTS

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OVERVIEW

The purpose of RCRA is not merely to control waste generation, waste management, or waste disposal. The title of the Act itself clearly reveals a major focus and intent of the regulatory program – resource conservation and recovery. As discussed in Section I, a major goal of RCRA is energy and natural resource conservation through taking steps to reduce the depletion of our natural resources and to protect those resources from hazardous constituents. Another major goal of RCRA is resource recovery through extracting usable resources from materials that are unintentionally created (i.e., wastes).

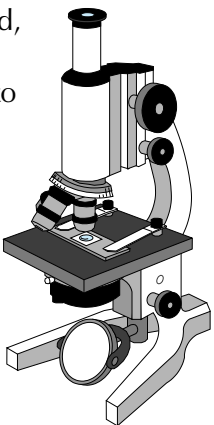
More specifically, such resource recovery or recycling entails the separation and collection of wastes for their subsequent transformation or remanufacture into usable products and materials.

Resource recovery is a major component of the RCRA program because it diverts large amounts of solid waste from landfills and incinerators, conserves space in landfills, recovers the precious raw materials that are often found in solid waste, and preserves natural resources that would otherwise be used to produce virgin products and materials.

To further this waste management approach, RCRA established specific provisions to promote the development of recycling capabilities and technologies, and develop a market for recyclable materials. As a result, the Statute contains provisions for technology and market development activities, as well as federal procurement requirements intended to bolster the demand for products containing recycled materials.

PROMOTION OF RECYCLING

When the Statute was enacted, the waste management and recycling industries were unable to maintain and promote substantial resource conservation and recovery of a wide range of materials. While specific industries, such as metals and glass recycling, were mature and developed, recycling of other commodities, such as old



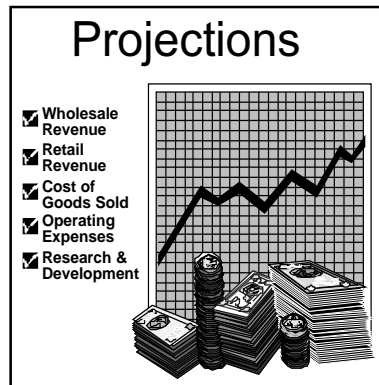
newspapers was not as advanced. While recycling was a major component of the regulatory program, there was neither the technology to recycle nor a market in which to sell and purchase such commodities.

Then (and now), without a market to sell or a demand to purchase recycled products, there was no incentive to perform the recycling activities in the first place. In other words, why make a product with a recycled material if no one will buy it?

Congress recognized this opportunity within the recycling industry and sought ways to promote both recycling activities and market development. As a result, RCRA includes provisions requiring EPA to take steps to identify markets for recovered materials, identify economic and technical barriers to the use of recovered materials, encourage the development of new uses for recovered materials, and promote recycling technologies. In addition, RCRA requires the National Institutes of Standards and Technology to develop specifications for recycled materials to facilitate their reuse in replacing virgin materials in various industrial and commercial products.

FEDERAL PROCUREMENT REQUIREMENTS

Realizing that recycling is not only the collection of materials for remanufacture, but also the purchase of products with recovered content by consumers, Congress sought ways to stimulate market demand for recycled materials. Congress realized that the purchasing power of the federal government, if focused on procuring materials with recovered content, could create a significant



demand for recycled materials thus stimulating the market. Increased demand by the federal government for products with recovered content would boost manufacturing of such items and encourage the private sector to purchase such goods as well. As a result, RCRA §6002 established the federal government's buy-recycled program, formally referred to as the federal procurement program.

The **federal procurement program** sets minimum **recovered materials content standards** for certain designated items and requires procuring agencies to purchase those items composed of the highest percentage of recovered materials practicable. Minimum content standards specify the minimum amount of recovered materials that designated items should contain.

Procuring agencies are defined as:

- Federal government departments or agencies
- State government agencies that use appropriated federal funds for procurement of a designated item
- Local government agencies that use appropriated federal funds for procurement of a designated item
- Government contractors that work on a project funded by appropriated federal funds, with respect to work performed under the contract.

Only procuring agencies that purchase \$10,000 or more worth of a designated item during the course of their fiscal year, or that purchased at least \$10,000 worth of a procurement item during the preceding fiscal year, are subject to these procurement requirements.

The Statute requires EPA to identify products that are or can be made from recovered materials, and to make recommendations concerning the procurement of items containing recovered materials. Procuring agencies can use these guidelines to meet these statutory requirements.

■ Comprehensive Procurement Guidelines

EPA designates items in a **Comprehensive Procurement Guideline** (CPG), which is updated annually. Currently there are 36 items designated within eight product categories (see Figure V-1). These product categories are:

- Paper and Paper Products
- Vehicular Products
- Construction Products
- Transportation Products
- Park and Recreation Products
- Landscaping Products
- Nonpaper Office Products
- Miscellaneous Products.

■ Recovered Materials Advisory Notice

For each item designated in the CPG, EPA also publishes a corresponding recovered content level (see Figure V-2). These recovered material levels are published in a **Recovered Materials Advisory Notice** (RMAN). Procuring agencies can use these levels as guidelines, but are encouraged to exceed EPA's recommendations. EPA also provides information on specifications for purchasing a particular item and other pertinent purchasing information.

Figure V-1: DESIGNATED PROCUREMENT ITEMS

Paper and Paper Products

All (except building and construction paper grades)

Vehicular Products

Engine Coolants
Rerefined Lubricating Oils
Retread Tires

Construction Products

Building Insulation Products
Polyester Carpet
Cement and Concrete Containing Coal Fly Ash and
Ground Granulated Blast Furnace Slag
Consolidated and Reprocessed Latex Paint
Floor Tiles
Laminated Paperboard
Patio Blocks
Shower and Restroom Dividers and Partitions
Structural Fiberboard

Transportation Products

Channelizers
Delineators
Flexible Delineators
Parking Stops
Traffic Barricades
Traffic Cones

Park and Recreation Products

Plastic Fencing
Playground Surfaces
Running Tracks

Landscaping Products

Garden and Soaker Hoses
Hydraulic Mulch
Lawn and Garden Edging
Yard Trimmings Compost

Nonpaper Office Products

Binders
Office Recycling Containers
Office Waste Receptacles
Plastic Desktop Accessories
Plastic Envelopes
Plastic Trash Bags
Printer Ribbons
Toner Cartridges

Miscellaneous Products

Pallets

Figure V-2:

SAMPLE RECOVERED MATERIALS ADVISORY NOTICE CONTENT LEVEL SPECIFICATION

Postconsumer materials are materials or finished products that have served their intended uses and have been discarded for disposal or recovery, having completed their lives as consumer items. For example, EPA recommends that 60-100% of the 90-100% recovered plastic that EPA recommends for plastic fencing, should originate from the recycling of postconsumer plastic.

Total recovered materials content refers to the total percentage of recovered materials that EPA recommends for a designated item. For example, EPA recommends that procuring agencies purchase plastic fencing that contains 90-100% recovered plastic.

**Recommended Recovered Materials Content Levels
for Fencing Containing Recovered Plastic**

Material	Postconsumer content (%)	Total recovered materials content (%)
Plastic.....	60-100	90-100

EPA's recommendation does not preclude a procuring agency from purchasing fencing that is manufactured from another material, such as wood. The procurement guidelines simply require that a procuring agency, when purchasing plastic fencing, purchase this item made with recovered materials to the extent possible.

■ Procurement Program

If an agency meets the definition of a procuring agency and is purchasing a certain dollar amount of a designated item, that agency is required to purchase items with recovered content to the maximum extent possible. Within one year after EPA designates an item, procuring agencies must revise their product specifications to require the use of recovered materials and to eliminate administrative barriers to the use of materials with recovered content, such as removing purchasing provisions that prohibit the use of recovered materials or require the exclusive use of virgin materials.

Not all procuring agencies will be able to purchase the designated items with recovered content. In some instances, such agencies will

need to purchase items that do not contain the minimum recovered content. The Statute provides, however, that procuring agencies need not purchase designated items if the designated items will not be available within a reasonable period of time, will not meet the agency's reasonable performance standards, or will not be available at a reasonable price. EPA, however, encourages such agencies to try to purchase designated items with recovered content to the extent practicable.

Each procuring agency must develop an affirmative procurement program for each designated item, setting forth the agency's policies and procedures for implementing the requirements.

EXECUTIVE ORDER 12873

When RCRA established the federal procurement program, EPA was required to follow the formal rulemaking process in order to designate an item and establish minimum content levels. After this rulemaking process, these items were formally codified in the CFR. Because of the length of this rulemaking process, from 1980 to 1993, EPA had only designated five items for the procurement program. In order to streamline this process, President Clinton signed Executive Order 12873 in 1993 to require EPA to change the process to allow more items to be designated faster. This change led to the CPG and RMAN.

The affirmative procurement program consists of four parts:

- Preference program
- Promotion program
- Estimation, certification, and verification program
- Monitoring and review program.

Preference Program

The preference program is a means by which an agency can show its preference for products made with recovered materials. It may consist of established minimum content standards, a case-by-case approach when the minimum content standard is inappropriate, or an equivalent alternative. Minimum content standards specify the minimum amount of recovered materials that designated items should contain. Agencies can adopt these standards on an agency-wide basis for all procurement actions. Case-by-case policy development allows the procuring agency to establish a separate recovered materials content requirement for a specific procurement action, while still enabling the agency to procure other designated products with the highest amount of recovered materials practicable. The procuring

agency can also choose an alternative that is equivalent to either of these options, such as contracting for recycling of spent engine coolant.

Promotion Program

Through the promotion program, the agency must actively promote its desire to buy recycled products, both internally within the agency and externally to product vendors. Internal promotion usually is a broad-based employee education program that affirms an agency's procurement policy through advertising, workshops, agency newsletters, and technical and staff manuals. Examples of external promotion include publishing articles in trade journals, participating in vendor shows or trade fairs, placing statements in bid solicitations, and discussing an agency's procurement policy at bidders' conferences.

Estimation, Certification, and Verification Program

The estimation, certification, and verification program establishes procedures for obtaining estimates and certifications, and where appropriate, reasonably verifying the amount of recovered materials content utilized in the performance of a contract.

Monitoring and Review Program

The monitoring and review program requires agencies to monitor affirmative procurement programs to ensure that they are fulfilling their requirements to purchase items composed of recovered materials.

■ Compliance

Once EPA designates an item in the CPG, the responsibility for complying with the procurement program rests with the procuring agency. There are no provisions in the Statute for federal enforcement of the guidelines. On the other

hand, RCRA §7002 citizen suit provisions allow citizens to sue in U.S. District Court to seek relief against any person alleged to be in violation of the requirements of the Act, including the procurement requirements. (Citizen suit provisions are fully discussed in Section III, Chapter 10.)

SUMMARY

In order to further RCRA's resource, conservation, and recovery goals, EPA established provisions to promote recycling and market development. RCRA created federal procurement requirements to create a significant demand for products with recovered content, boost manufacturing of such products, and encourage the private sector to purchase such goods as well.

The procurement requirements apply to procuring agencies that purchase \$10,000 or more worth of a designated item during the course of their fiscal year, or that purchased at least \$10,000 worth of a procurement item during the preceding fiscal year.

Procuring agencies are defined as:

- Federal government departments or agencies
 - State government agencies that use appropriated federal funds for procurement of a designated item
 - Local government agencies that use appropriated federal funds for procurement of a designated item
 - Government contractors that work on a project funded by appropriated federal funds, with respect to work performed under the contract.
- The federal procurement program sets minimum recovered materials content standards for certain designated items and requires procuring agencies to purchase those items composed of the highest percentage of recovered materials practicable. EPA designates these items in the CPG and specifies minimum recovered content levels in an RMAN.
- Each procuring agency must develop an affirmative procurement program for each designated item, setting forth the agency's policies and procedures for implementing the requirements. This program consists of four parts:
- Preference program
 - Promotion program
 - Estimation, certification, and verification program
 - Monitoring and review program.